IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10829 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINBHAI RANCHHODBHAI RANA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10829 of 2001

MS KRISHNA U MISHRA for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/01/2002

ORAL JUDGEMENT

The petitioner is detained under the provisions of PASA Act, by virtue of the order passed by the Commissioner of Police, Baroda City, Baroda on July 25,

2001. The petitioner is branded as a bootlegger. The detaining authority considered five offences registered against the detenu and statements of three anonymous witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order. The authority also considered the possibility of resorting to less drastic remedy under the ordinary laws and came to the conclusion that resorting to less drastic remedy is not possible as the petitioner detenu is required to be immediately prevented from pursuing his illegal activity and his detention under PASA is the only efficacious remedy which can be resorted to.

2. The detenu petitioner challenges the said order under this petition under Article 226 of the Constitution of India on various grounds.

3. Ms. Mishra appearing for the petitioner has mainly concentrated on the contention that there is gross delay in consideration of the representation made on behalf of the detenu. She places on record a communication received by the detenu from the Home Department through Jail authorities. That communication indicates that a representation was made on behalf of the detenu on Nov. 6, 2001, which was rejected by the Government on 16th Nov. 2001, whereas the communication is despatched on Nov. 28, 2001 and is received by the detenu on 1.2.2001.

4. Learned AGP Mr. D.P. Joshi has opposed this petition.

5. Considering the contentions raised, the petition deserves to be allowed on the ground of delay in considering the representation and communicating the decision to the detenu, which would infringe the right of the detenu as envisaged under Art. 22(5) of the Constitution of India.

6. It is amply clear that the representation was made on 6.11.2001, which was rejected by the Government on 16.11.2001. Thereafter, no action is taken for 12 days and only on 28.11.2001 the communication is addressed to the detenu, which reaches him on 1.12.2001. Why so much of time was consumed in considering the representation has not been explained by the respondents. No affidavit is filed and therefore, the petition deserves to be allowed on the ground of delay in considering the representation affecting the right of the detenu of making an effective representation. The said

right is guaranteed under Art. 22(5) of the Constitution of India and it's infringement would render continued detention of the detenu as illegal. The petition therefore deserves to be allowed.

7. The petition is therefore, allowed. Order of detention dated 25th July, 2001 passed by the Commissioner of Police, Baroda City, Baroda is quashed and set aside. Detenu Pravinbhai Ranchhodbhai Rana be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas